

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF PUBLIC HEARING  
amendment of ARM 17.8.504, ) ON PROPOSED AMENDMENT  
17.8.505, and 17.8.514 )  
pertaining to air quality ) (AIR QUALITY)  
permit application, operation)  
and open burning fees )

TO: All Concerned Persons

1. On August 3, 2005, at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 25, 2005, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.504 AIR QUALITY PERMIT APPLICATION FEES

(1) Concurrent with submittal of a Montana air quality permit application, as required in ARM Title 17, chapter 8, subchapters 7, 8, 9, or 10 ~~or ARM Title 17, chapter 8, subchapter 8~~, the applicant shall submit an application fee ~~of \$500.~~ as provided in (1)(a) and (b):

(a) \$3,000 for an application subject to the provisions of ARM Title 17, chapter 8, subchapters 8, 9, or 10 for a facility for which the department has not previously issued a Montana air quality permit; or

(b) \$500 for an application not included in (1)(a).

(2) through (4) remain the same.

AUTH: 75-2-111, 75-2-220, MCA

IMP: 75-2-211, 75-2-220, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) through (4)(b) remain the same.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of ~~\$400~~ 470, plus ~~\$21.58~~ 21.53 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

(6) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: Pursuant to 75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Although the costs of issuing air quality permits have increased annually, permit application fees have remained the same since calendar year 2000. It takes extra staff time to process permit applications for new facilities. Operating fees paid by existing facilities have traditionally subsidized a significant portion of the Department's costs of processing permit applications for new facilities, which initially do not pay operating fees. The proposed increase in the application fee for new major facilities will more accurately reflect the costs of processing these applications.

In 2000, the Board amended ARM 17.8.504 to substitute the current flat permit application fee of \$500 for all emission sources for the previous fee of \$500 for minor sources and a fee of \$1,500 for major sources subject to subchapters 8, 9, or 10, which the Board had adopted in 1999. The Board eliminated the tiered system in favor of a flat fee for all applications because it can be difficult to determine, at the time of application, whether the major source permit application rules apply or not and this determination can delay processing of permit applications. At that time, the \$1,500 fee for major sources represented the minimum cost related to processing a major source application. The Board now believes that restoring the tiered application fee system is necessary to more equitably apportion the Department's permit application costs according to the level of time required to process the application. The Board is proposing to restore the tiered application fee system and increase the application fee for new major sources to \$3,000, which more accurately reflects the Department's present costs in processing a new major source permit application than the

\$1,500 fee adopted in 1999. The Department estimates that in fiscal year 2006 there will be one new permit application for a new major source subject to the provisions of ARM Title 17, chapter 8, subchapters 8, 9, or 10. This will result in a total increase of \$2,500 in new permit application fees.

Air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10 (particulate matter with a diameter of 10 microns or less), sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

The annual administrative fee has remained the same since calendar year 1999. The proposed increase is based upon increases in the Consumer Price Index since that year.

The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous fiscal year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

This rulemaking would set the air quality operation fees to be billed in calendar year 2005. Air quality fees billed in 2005 will be based on emissions from calendar year 2004 and will fund the Department's activities in fiscal year 2006.

The legislative appropriation from fiscal year 2005 was \$2,706,877. The amount of the carryover from fiscal year 2004 was \$152,021. The total amount of pollutants reported for calendar year 2004 fees was 103,979 tons, and the per-ton component of the air quality operation fee was \$21.58.

The appropriation for fiscal year 2006 is \$2,827,047, an increase of \$120,170 from this fiscal year. The projected carryover from fiscal year 2005 is \$175,710. The total amount of pollutants reported for 2005 fees is 106,056 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the Department's costs of developing and administering the air quality permitting program, it is necessary for the Board to decrease the per-ton charge to \$21.53. Therefore, the Board is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of \$21.58 with \$21.53.

In calendar year 2004, the total amount of fees assessed was \$2,463,228. The amount of fees that would be assessed to meet this fiscal year's appropriation would be \$2,554,103, for an increase of \$90,875. In calendar year 2005, fees would be

assessed for 578 facilities.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4) The air quality major open burning permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality major open burning permit required under ARM 17.8.610.

(a) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to (4)(b):

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous appropriate calendar year,  
multiplied by ~~\$7.67~~ 10.87; plus  
tons of oxides of nitrogen emitted in the previous appropriate calendar year,  
multiplied by ~~\$1.92~~ 2.72; plus  
tons of volatile organic compounds emitted in the previous appropriate calendar year,  
multiplied by ~~\$1.92~~ 2.72; or

(ii) a minimum fee of ~~\$250~~ 350.

(b) remains the same.

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: The Board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2006. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2004, the major open burners reported 9,029.6 tons of emissions, compared to 14,370.0 tons for calendar year 2003, or a decrease of 5,340.4 tons.

The budget for operating the program for 13 major open burners in fiscal year 2006 is \$41,741, compared to a budget of \$45,629 for fiscal year 2005. The \$3,888 budget decrease

is due to an expected decrease of \$12,000 for contracted meteorological services. Anticipated increases include \$3,587 for salaries, \$1,076 for benefits, \$2,000 for meteorological equipment, \$171 for travel, and \$1,278 for indirect costs. Due to the decrease in the emission inventory, it is necessary to increase the per-ton charge. The Board is proposing to increase the permit fees from \$7.67 per ton of particulate, \$1.92 per ton of oxides of nitrogen, and \$1.92 per ton of volatile organic compounds emitted to \$10.87, \$2.72 and \$2.72, respectively.

The cumulative amount of the fees would equal the budget of \$41,741. This amount would be distributed among the 13 major open burners.

Open burning fees were implemented in 1992, and the minimum open burning permit application fee has remained the same since that time. The proposed increase in the minimum fee is based upon changes in the Consumer Price Index between 1992 and 2005.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., August 10, 2005. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general

procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

David M. Rusoff

BY: Joseph W. Russell

DAVID M. RUSOFF

JOSEPH W. RUSSELL, M.P.H.,

Rule Reviewer

Chairman

Certified to the Secretary of State June 20, 2005.